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Counsel for Defendants,  
Affymax, Inc., John A. Orwin, Robert F.  
Venteicher, Jeffrey H. Knapp, Anne-Marie  
Duliege, Herb Cross, Kathleen Laporte, Ted  
W. Love, Daniel K. Spiegelman, John P.  
Walker, Christine Van Heek, Keith R. Leonard,  
Jr., and Hollings C. Renton

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CHRIS MISIALEK, Derivatively On  
Behalf Of AFFYMAX, INC.

Plaintiff,

v.

JOHN A. ORWIN, ROBERT F. VENTEICHER,  
JEFFREY H. KNAPP, ANNE-MARIE DULIEGE,  
HERB CROSS, KATHLEEN LAPORTE, TED W.  
LOVE, DANIEL K. SPIEGELMAN, JOHN P.  
WALKER, CHRISTINE VAN HEEK, KEITH R.  
LEONARD, JR., and HOLLINGS C. RENTON,

Defendants,

-and-

AFFYMAX, INC., a Delaware corporation,

Nominal Defendant.

Case No. 3:13-cv-03832-WHO

**JOINT REQUEST FOR ORDER  
REGARDING STAY AND [PROPOSED]  
ORDER**

Judge: Hon. William H. Orrick

1 Plaintiff Chris Misialek ("Plaintiff"), by and through his undersigned counsel, and  
 2 defendants John A. Orwin, Robert F. Venteicher, Jeffrey H. Knapp, Anne-Marie Duliege, Herb  
 3 Cross, Kathleen Laporte, Ted W. Love, Daniel K. Spiegelman, John P. Walker, Christine Van  
 4 Heek, Keith R. Leonard, Jr., Hollings C. Renton, and nominal defendant Affymax, Inc.  
 5 ("Affymax") (collectively, the "Defendants") (Plaintiffs and Defendants are collectively referred  
 6 to herein as the "Parties"), by and through their undersigned counsel, hereby stipulate and agree  
 7 as follows:

8 WHEREAS, on August 19, 2013, Plaintiff Chris Misialek filed the Shareholder Derivative  
 9 Complaint for Contribution, Breach of Fiduciary Duty, Waste of Corporate Assets, and Unjust  
 10 Enrichment (the "Complaint") asserting claims derivatively on behalf of nominal defendant  
 11 Affymax, Inc. ("Affymax" or the "Company") against certain officers and directors of the  
 12 Company (the "Federal Derivative Action");

13 WHEREAS, there is a securities fraud class action pending before the U.S. District Court  
 14 for the Northern District of California ("District Court") captioned *Bartelt v. Affymax, Inc., et al.*,  
 15 Case No. 3:13-cv-01025-WHO (the "Securities Class Action") asserting federal claims arising  
 16 from facts common to this action;

17 WHEREAS, the damages alleged in the Complaint are, in part, related to the defense  
 18 costs, potential settlement or potential adverse judgment in the Securities Class Action;

19 WHEREAS, on October 21, 2013, this Court entered an order staying this Federal  
 20 Derivative Action until after a ruling on the motion to dismiss in the Securities Class Action (the  
 21 "Stay Order");

22 WHEREAS, on January 21, 2014, the District Court entered an order granting in part and  
 23 denying in part the motion to dismiss in the Securities Class Action (the "Order"). Pursuant to the  
 24 Order, any amended complaint in the Securities Class Action shall be filed within 30 days of the  
 25 Order;

26 WHEREAS, the Parties have met and conferred, consistent with the Stay Order, and have  
 27 reached agreement that a stay of this Federal Derivative Action is warranted based on the facts  
 28 and circumstances and considerations of judicial economy and efficiency, as set forth below:

1           **NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and among  
 2 the undersigned counsel for the Parties, that:

3           1.       This Federal Derivative Action is stayed in its entirety. Unless otherwise agreed  
 4 by the Parties with the consent of the Court, this action shall remain stayed until resolution of the  
 5 Securities Class Action;

6           2.       Within 20 days of resolution of the Securities Action, the parties to this Federal  
 7 Derivative Action shall meet and confer regarding whether the stay should remain in place or  
 8 should be lifted, and shall present agreement, or their respective views, to the Court. Upon  
 9 resolution of the Securities Action, no defendant shall have to respond to the Complaint until a  
 10 new response date is set and/or approved by the Court;

11          3.       If discovery proceeds in the Securities Class Action, and subject to entry of any  
 12 appropriate confidentiality agreement or protective order that may be entered into by the parties  
 13 in the Securities Class Action, Defendants agree to promptly provide Plaintiff with any and all  
 14 discovery, formal or informal, that is produced or exchanged in the Securities Class Action.  
 15 Defendants agree to provide such documents to Plaintiff, in the same form they are produced or  
 16 exchanged in the Securities Class Action, within three business days of their production or  
 17 exchange in the Securities Class Action;

18          4.       Prior to a judicial determination that Plaintiff has adequately pleaded demand  
 19 futility under Delaware law, the Parties agree that, absent a court order, documents and  
 20 information obtained pursuant to this Stipulation shall not be used to amend Plaintiff's complaint  
 21 and shall be protected pursuant to Federal Rule of Evidence 408; and

22          5.       This Stipulation shall not preclude or prevent the Parties from stipulating to, or  
 23 filing a motion seeking a court order lifting, modifying or extending the terms of this Stipulation  
 24 upon a showing of good cause.

25           **IT IS SO STIPULATED.**

26 DATED: January 31, 2014

**FINKELSTEIN THOMPSON LLP**

27 By: /s/Rosemary M. Rivas  
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Counsel for Plaintiff, *Chris Misialek*

DATED: January 31, 2014

COOLEY LLP

By: /s/Jeffrey M. Kaban  
 Jeffrey M. Kaban (235743)

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 (dwyerjc@cooley.com)  
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 Love, Daniel K. Spiegelman, John P. Walker,  
 Christine Van Heek, Keith R. Leonard, Jr., and  
 Hollings C. Renton*

**ATTESTATION (CIVIL LOCAL RULE 5-1(i)(3))**

In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from the signatory.

Dated: January 31, 2014

COOLEY LLP

/s/Jeffrey M. Kaban

Jeffrey M. Kaban (235743)

Attorneys for Defendants

*Affymax, Inc., John A. Orwin, Robert F. Venteicher, Jeffrey H. Knapp, Anne-Marie Duliege, Herb Cross, Kathleen Laporte, Ted W. Love, Daniel K. Spiegelman, John P. Walker, Christine Van Heek, Keith R. Leonard, Jr., and Hollings C. Renton*

\* \* \*

**[PROPOSED] ORDER**

1  
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9 new response date is set and/or approved by the Court;

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11 appropriate confidentiality agreement or protective order that may be entered into by the parties  
12 in the Securities Class Action, Defendants agree to promptly provide Plaintiff with any and all  
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22 filing a motion seeking a court order lifting, modifying or extending the terms of this Stipulation  
23 upon a showing of good cause.

24               **IT IS SO ORDERED.**

25  
26 DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable William H. Orrick  
United States District Judge